

RULE

Firefighters' Pension and Relief Fund City of New Orleans and Vicinity

Deferred Retirement Option Plan

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity (the "fund"), pursuant to R.S. 11:3363(F), has adopted rules and regulations for participation in the Deferred Retirement Option Plan, in accordance with the provisions of R.S. 11:3385.1.

Rules and Regulations for Participation in the Deferred Retirement Option Plan

In accordance with R.S. 11:3385.1, a member of the Firefighters' Pension and Relief Fund may elect to participate in the Deferred Retirement Option Plan upon the board's determination that the member is eligible to receive a service retirement benefit pursuant to R.S. 11:3381 or 3384, provided all applicable provisions of R.S. 11:3361 et seq., including R.S. 11:3385.1 pertaining to the DROP and these rules and regulations are fully satisfied.

A. Definitions. In connection with R.S. 11:3385.1 and when used in these rules and regulations, the following terms shall have the following meanings:

Board or Board of Trustees—the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans.

Covered Employment—service pursuant to R.S. 11:3361 as a firefighter employed by the fire department of the city of New Orleans actively engaged in the extinguishment of fires.

Creditable Service—pension credits accrued in the fund by a member on the basis of services rendered in covered employment. Solely for purposes of eligibility in the DROP, *creditable service* shall include service credit reciprocally recognized under R.S. 11:142.

DROP—established in R.S. 11:3385.1 for eligible members of the Firefighters' Pension and Relief Fund for the City of New Orleans.

DROP Account—an individual member's accumulation of monthly service retirement benefits payable to him by the fund during a period of DROP participation in accordance with the member's service retirement benefit election.

Fund—the Firefighters' Pension and Relief Fund for the City of New Orleans.

Fund DROP Account—the bank account held by the fund on behalf of all participating DROP members in which are deposited the monthly payments payable on behalf of each member for his individual DROP account during his participation in the DROP.

Member—a firefighter employed by the fire department of the city of New Orleans who is actively engaged in extinguishing fires, or is otherwise eligible pursuant to R.S. 11:3361 to participate in the fund.

Retired Member—a former member receiving retirement benefits from the fund, but not including a DROP participant who has not yet received distribution of his DROP account balance.

Service Retirement Benefit—the vested benefit of a member payable from the new system under R.S. 11:3384 or from the old system under R.S. 11:3381.

Qualified Domestic Relations Order or QDRO—an order issued by a court of competent jurisdiction recognized and approved by the board pursuant to its rules and regulations relating to QDROs as requiring the board to make payment of a part or all of a member's retirement benefit to an alternate beneficiary.

Year of Creditable Service—a period of 12 consecutive months of pension credit accrued in the fund by a member on the basis of services rendered in covered employment.

B. Eligibility

1. In order to satisfy eligibility to participate in the DROP, the member shall satisfy the following conditions:

a. The member shall have accrued not less than 20 years of creditable service, including not less than 15 years of creditable service accrued in this fund plus any reciprocal credit reciprocally recognized by the board under R.S. 11:142.

b. The member shall satisfy all eligibility requirements for a service retirement benefit.

c. The member shall file with the board and the board shall approve the member's service retirement benefit application.

d. The member shall file and the board shall approve the member's DROP enrollment application.

e. By submitting a DROP enrollment application, the member shall automatically elect to participate in the DROP for the full three-year period. Nonetheless, the member may exit the DROP at any time by filing with the board an application to withdraw from the DROP, effective upon the board's approval.

2. A member may participate in the DROP only once.

3. The member's application to enter the DROP shall request retirement on the first day of a calendar month and shall specify a requested effective date no earlier than the first day of the second calendar month following the calendar month in which the DROP enrollment application is submitted. The service retirement application and the DROP enrollment application shall not be submitted to the board for consideration and approval until such time as all required and requested data, documentation and information have been submitted to the board in order to complete both the service retirement and the DROP enrollment applications. Such participation shall be limited to a maximum period of three years—i.e., 36 calendar months—as to each individual.

C. Participation in and Withdrawal from the DROP

1. The effective date of a member's entry into the DROP shall be the first day of the second calendar month following the calendar month in which the member initially files his DROP enrollment application, providing, however, that:

a. The member has completed submission of any and all requested data, documentation and information to the board in connection with the DROP enrollment application and the service retirement application no later than the seventh of the first calendar month (or the first work day following this date if the seventh of the first calendar month falls on a holiday or weekend) following the submission date; and

b. the board has considered and formally approved said applications prior to the requested effective date.

2. Upon the effective date of the member's DROP participation, the fund shall distribute monthly benefit payments pursuant to the member's service retirement award into the member's DROP account.

3. Upon a member's commencement of participation in the DROP, his membership in the fund shall terminate and he shall accrue no additional creditable service during DROP participation.

4. No employer contributions shall be made to the fund on behalf of a member participating in the DROP, nor shall the member be required to make employee contributions to the fund.

5. A member's compensation and creditable service shall be frozen when the member enters participation in the DROP and shall thereafter remain as they existed on the effective date of the member's commencement of participation in the DROP.

6. A member participating in the DROP shall not be eligible to receive the cost-of-living adjustments awarded by the fund from time to time to retired members. Eligibility for cost-of-living adjustments shall not commence until the member has been separated from covered employment for one full year.

7. A member's DROP account shall not be charged, debited or assessed any fees, charges or similar expenses of any kind for any purpose, nor shall the account be subject to diminution based on valuation or earnings losses of any kind. In addition, no such fees, charges, losses or other similar charges shall be charged, debited or assessed against the member indirectly.

8. A member's DROP account shall not earn or accrue any interest, gains, or earnings of any kind, nor shall the member accrue such earnings indirectly.

9. Pursuant to R.S. 29:415.1, a member shall not accrue any military service credit or pension credit based on military service performed during a member's participation in the DROP.

10. The duration of participation in the DROP shall not exceed a period of three consecutive years—i.e., 36 consecutive calendar months measured from the effective date of commencement of participation in the DROP.

11. A member may terminate his participation in the DROP to be effective as of the last day of any calendar month prior to the end of the maximum three-year period by filing with the Board of Trustees of the fund a DROP withdrawal application, providing the DROP withdrawal application is submitted to the board no later than the last day of the previous calendar month.

12. If a member participating in the DROP does not terminate his covered employment

upon completion of three years of participation in the DROP or upon the effective date of his approved withdrawal prior thereto, payment of the member's service retirement benefit into the member's DROP account shall automatically cease. In the event the member has failed to notify the board of his intent to continue in his covered employment after the effective date of his DROP completion, the board shall notify the member in writing, at his last known address, that the fund has ceased monthly payments into his DROP account.

13. If the member should die during his period of participation in the DROP, a lump sum payment of the balance in the member's DROP account shall be paid within one year of his death to his designated beneficiary or, if none, to his estate. Any additional survivor and/or death benefits payable to the member's beneficiary or beneficiaries, in accordance with the member's individual retirement election, all applicable statutory provisions, and the board's rules and regulations pertaining to death benefits, shall also be subject to distribution.

14. No distribution shall be made from a member's DROP account until the member's covered employment has been fully terminated. A member's DROP account shall not be distributable at any time during the member's DROP participation or at any time prior to the member's separation from covered employment, even if the member has exited from the DROP.

15. Any payment of the member's DROP account shall be made only as a one-time lump sum payment. Installment, piecemeal, partial, pro rata or annuity payments of any kind from the DROP account shall be strictly prohibited.

16. Neither a member nor a beneficiary shall be permitted to defer receipt of a distribution from the member's DROP account beyond one year—i.e., 12 consecutive calendar months—following the effective date of the member's termination of covered employment, or the member's death, as applicable.

17. Upon termination of covered employment, the member shall file an application with the board requesting distribution of his DROP account on the first day of any calendar month within one year following the calendar month of termination. Provided, however, that the requested distribution date shall be no earlier than the second calendar month following the calendar month of termination.

18. In the event a member validly elects to rollover all or any part of his DROP distribution to a qualified plan or an individual retirement account, said distribution shall not be made until at least 30 days after the member has acknowledged in writing receipt of the applicable explanation to employees and notice relating to rollover, direct rollover, income averaging treatment and tax consequences upon distribution, or compliance with any timeliness requirement subsequently established by applicable law, if different. Any such election shall be made in compliance with the board's rules and regulations of direct rollovers and all applicable provisions of the Internal Revenue Code then effective.

19. Upon termination of covered employment, the monthly benefits that were formerly paid into the member's DROP account during his period of participation shall be paid directly to the retired member.

20. The member shall not be permitted to change, revoke or rescind the retirement benefit distribution option selected and/or the beneficiary or beneficiaries he designated upon entering into the DROP regarding his service retirement benefit nor shall any such change be permitted at the time the DROP account is distributed.

21. If the member does not terminate his covered employment upon completion of the maximum three-year participation period or upon such earlier date as the member has specified for withdrawal:

- a. monthly service retirement benefit payments into the DROP account shall cease; and
- b. the member shall resume active membership in the system; and
- c. the member shall commence accrual of additional creditable service under the system.

D. Post-DROP Accruals and Retirement Benefits

1. If a member continues in covered employment after termination of his participation in the DROP, the member shall accrue a second retirement benefit based on his additional covered employment performed following the date of termination of his DROP participation, using the normal method of computation of benefits, subject to the following conditions:

- a. New System Member
 - i. If the member originally retired from the new system, and his period of additional covered employment after termination of DROP participation is less than 48 months, the average compensation figure used to calculate the additional benefit accruals shall be that used to calculate the member's original benefit.

ii. If the member originally retired from the new system, and his period of additional covered employment after termination of DROP participation is 48 months or more, the average compensation figure used to calculate the additional benefit accruals shall be based on the member's compensation earned during the period of post-DROP service.

b. Old System Member

i. If the member originally retired from the old system and his period of additional covered employment is less than 12 months, the average compensation figure used to calculate the additional benefit shall be that used to calculate the member's original benefit.

ii. If the member originally retired from the old system and his period of additional covered employment is 12 months or more, the average compensation figure used to calculate the additional benefit shall be based on the member's compensation during the period of additional service.

c. If the member was first employed before December 31, 1967 but originally elected to retire from the new system, that election shall also apply to and determine the additional benefits accrued for post-DROP service.

2. The distribution option under R.S. 11:3385 originally selected by the new system member upon entering into the DROP shall also apply to any additional benefits accrued during the period of additional covered employment.

3. The beneficiary designated by the member upon entry into the DROP shall also be the beneficiary or beneficiaries designated in connection with the additional benefits accrued. However, in the event the member's designated beneficiary has predeceased the member, the member may designate a new beneficiary or beneficiaries for purposes of the additional retirement benefit only.

4. If following a period of additional covered employment performed after leaving the DROP the board determines that the member is disabled pursuant to R.S. 11:3376 and is therefore eligible to receive a service-connected disability benefit, the following terms and conditions shall apply:

a. The amount of the service-connected disability benefit shall be in the same amount and calculated as a service retirement benefit based only on the credited service accrued subsequent to the date of the member's termination of participation in the DROP.

b. The fund shall distribute to the member, no later than one year following termination of covered employment, a lump sum payment equal to his DROP account balance.

c. The member's monthly benefit payments attributable to both the original and the additional benefits shall be paid directly to the retiree.

d. All monthly benefits paid and payable to the member, as well as his DROP account balance, shall be classified by the fund as service-connected disability benefits and shall be so reported on all necessary filings made by the fund to the Internal Revenue Service.

e. Under no circumstances shall the original benefit amount or the DROP account balance be recalculated, for any purpose.

5. In no event shall the member's additional retirement benefit exceed an amount which, when combined with the original benefit, equals 100 percent of the average of any three highest consecutive years of compensation earned by a member who elected to retire under the old system, or 100 percent of the average of any four highest consecutive years of compensation earned by a member who elected to retire under the new system, both during participation and after withdrawal from the DROP.

E. Trustees' Procedures Applicable to Payments to Drop Accounts

1. The procedures herein set forth shall govern the monthly payments owed by the fund to each member's DROP account during his participation in the DROP.

2. The board shall maintain a detailed accounting of each individual DROP account on behalf of each member currently participating in the DROP. Each month that a payment is due on behalf of the member, the board shall show a credit to the member's account and shall maintain a current balance showing the total credit to each member's account. At such time as the balance maintained in an individual member's DROP account shall exceed \$95,000, the board shall make all subsequent monthly payments directly to a separate fund bank account to be known as the excess DROP account to be established at a bank other than the fund's then current custodian bank in order to preserve full FDIC pass-through insurance for all participating members. An accounting of all such deposits exceeding \$95,000 per member and the balance to the credit of each such individual DROP participant in the separate excess DROP account shall be maintained. The sum of the participant's balances in both banks shall be the total to be distributed to the participant at such time as a distribution is due.

3.a. Old System. At such time as the board furnishes to the City of New Orleans the required annual report pursuant to R.S. 11:3375 of projected retirements, distributions, and other data necessary for the council to appropriate a budget allocation for each subsequent year, the board shall include in such projections all benefit obligations projected by the board relative to members retiring from the old system and entering or remaining in the DROP and shall include the projected monthly payments payable to fund DROP accounts for the benefit of all DROP participants.

b. New System. In regard to those members retiring under the new system, at such time as the fund's actuary certifies pursuant to R.S. 11:3363(D) the annual amount of contributions required to be paid by the City of New Orleans for the subsequent year in order to maintain the new system on an actuarial basis, the fund actuary shall include therein actuarial projections relative to all anticipated benefit obligations projected for members retiring from the new system and entering or remaining in the DROP and shall include the projected monthly payments payable to fund DROP accounts for the benefit of all DROP participants.

4. When a member enters the DROP, a book transfer shall be made each month of the payment owed by the fund to each DROP participant until such time as the balance in the member's DROP account reaches \$95,000. Thereafter, the board shall cause a payment to be made each month from regular fund assets to the excess DROP account on behalf of that member, representing the amount of his monthly service retirement award.

5. The board shall maintain complete accounting records documenting all payments, receipts and distributions to and from the fund's excess DROP account, as well as a detailed record of the amount held and accumulated in each member's individual DROP account on behalf of each individual participant in the DROP, and the dates of all transactions related thereto. Nevertheless, all payments to the excess DROP account for the benefit of DROP participants shall be maintained in a joint account for all members, and the board shall not maintain individual or segregated bank accounts on behalf of each member.

6. The fund's actuary shall record in his annual actuarial valuation performed on behalf of the fund relative to the old and the new systems the amount of assets held each year in the excess DROP account for the benefit of all members currently participating.

7. On an annual basis, or more frequently should the board so determine, all earnings accrued in the excess DROP account shall be transferred from the excess DROP account to the fund's general bank account, to be invested or utilized as a general asset of the fund.

8. No payments, disbursements, or deductions of any kind shall be made from the assets held in the excess DROP account other than distributions owed to individual members and the transfer of earnings held in the excess DROP account to the fund's general assets, as described in Paragraph 7 hereof.

9. All costs, expenses and fees payable in connection with DROP participation and/or maintenance of excess DROP account, including any bank charges associated with the maintenance thereof, shall be paid, if and when due, only from the fund's general assets and from bank accounts other than the excess DROP account.

10. All assets held either in the fund's general account or in the excess DROP account on behalf of DROP participants shall be held, recognized, and treated as fund assets until such time as distributions approved by the board are made therefrom. No individual member participating in the DROP, or any person claiming through him, shall have any personal ownership, interest or entitlement in any fund account, including the excess DROP account, until such time as a distribution is made to or on his behalf by the board.

11. All DROP assets held in the fund's general account or in the excess DROP account shall be exempt from seizure, levy, sale, garnishment, attachment or any other process whatsoever, and shall be exempt from state and municipal taxes, except as follows:

a. The board shall honor all QDROs recognized by the board as valid pursuant to its procedural rules and regulations for determining status of qualified domestic relations orders, in accordance with the terms, conditions and effective dates specified in each such individual order.

b. The board shall honor any such levy, garnishment or other process validly served upon it in the event the board determines, based on advice of its counsel, that the process in question is based on statutory, administrative, judicial or other authority or precedent that preempts and/or supersedes the provisions of R.S. 11:3389.

12. At such time as distributions are made by the fund to participants, beneficiaries or other persons claiming through them, the payments shall be subject to federal, state and municipal taxation, and to levy, garnishment, seizure, sale, attachment or any other process whatsoever, that is applicable to any other distribution or payment made to a retired member. However, any distribution of the balance contained in a member's DROP

account shall also be subject to federal income tax and withholding treatment under the rollover provisions of the Internal Revenue Code, the regulations issued thereunder by the Internal Revenue Service, and the board's rules and regulations of direct rollovers, in the event the member or a qualified beneficiary should elect rollover treatment.

13. In the event a DROP participant has failed to keep the fund advised of his current address and whereabouts at a time when a distribution is due from the member's DROP account, the fund shall forward the distribution to the member's last known address, via certified mail. If said mailing is returned to the fund, the fund shall hold said mailing and check in the participant's file until such time as the board receives additional information sufficient to permit distribution. Any such distribution shall be made as a direct payment to the individual member, unless the member shall have validly elected to make a direct rollover to a qualified plan or a financial institution, in which event said election shall be honored.

14. If the board is unable to effect the required distribution because of the member's failure to advise the fund of his current address, or for any other reason not directly attributable to the fund's intentional action or inaction, neither the fund nor the board shall be responsible or liable for any loss, prejudice, expense or other consequences, including tax liability or consequences, attributable to the fund's inability to distribute. No matter how long the board is required to hold the distribution due to such member failure, no interest, gains, or earnings of any kind shall be payable thereon.

15. At such time as a participant requests or the fund is required to effect any distribution of a member's DROP account balance, the board shall furnish to the member the applicable notice and explanation to employees relating to direct rollover, income averaging treatment and tax consequences upon distribution required under Internal Revenue Code §402(F) and Internal Revenue Service Notice No. 92-48, such notice to be furnished in accordance with the time delays and other requirements therein specified, as amended from time to time. Currently said statutory provisions and Internal Revenue Service Notice require that the notice and explanation to employees be furnished no later than 30 days prior to the date the DROP account is distributable.

16. Neither the board nor the fund shall give, distribute or offer to any member or participant on the fund's behalf any advice, counseling, or information concerning taxability and tax consequences, or financial information pertaining to DROP distributions, other than the general summation reflected in the fund's explanation and notice to employees. Instead, the fund and the board shall advise the member that the rules applicable to distributions of lump sum amounts for a member's DROP account are complex and confusing and may prompt the member, in his individual discretion, to seek advice from a competent professional tax advisor or from the member's local Internal Revenue Service office, which from time to time may distribute publications relative to retirement distributions and related matters.

F. General

1. Consistent with the provisions of R.S. 11:3361 et seq., the board shall have full and complete authority and discretion to determine the eligibility of any member to enter the DROP and to receive a DROP distribution and to make any other determinations pertaining thereto, consistent with all applicable statutory provisions, applicable jurisprudence published thereunder, and all rules and regulations adopted by the board from time to time, including these rules and regulations pertaining to the DROP.

2. Should the board determine that a member is ineligible to participate in the DROP or should it make any other determination pertaining to the DROP that is considered by the member, a beneficiary, legal representative, or other person claiming through the member to be adverse or in any way prejudicial, the injured person shall be entitled to pursue an appeal before the board in accordance with the appeal procedures set forth in the fund's summary plan description. At the time any decision is issued to the board member, whether or not the board considers it to be adverse to the claimant, the claimant shall be advised in writing of such entitlement to request rehearing and of the time delays and other requirements to be observed in connection therewith.

3. No member, beneficiary, legal representative, or other person claiming through the member shall be entitled to pursue judicial review of any board determinations reached in regard to DROP entitlement and other issues pertaining to DROP participation, exit from the DROP, benefit distributions from the DROP, and related matters, unless the claimant shall first have exhausted all internal fund appellate and review procedures and the board has issued a final decision, and then only in accordance with applicable provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

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